

# City of Airway Heights

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September 12, 2008

Federal Communications Commission (FCC), Office of the Secretary  
Attn: Commission Secretary  
445 12th Street, SW  
Washington, DC 20554

RE: Comment on CTIA Petition (DA 08-1913, WT Docket No. 08-165)

To The Commission Secretary:

The City of Airway Heights, located in the State of Washington, would like to thank the Federal Communications Commission for the opportunity to comment on the CTIA – “The Wireless Association’s” request for a clarification ruling on purported ambiguities relating to the Communications Act of 1934 and the 1996 Communications Act. The City of Airway Heights respectfully submits to the Commission that CTIA’s interpretation of the intent of the Communications Act of 1934 is erroneous and that the proposed interpretation brought forth by the CTIA to address concerns with the 1996 Communications Act is overly broad and effectively removes from local municipalities control over issues relating to appropriate land-use, public safety, and community character.

Issue #1: CTIA cites the 1934 Communications Act referencing the need for ‘Nation-wide...radio communication service with adequate facilities’ as being a basis for CTIA’s position. This act was intended to ensure all Americans would have easy access to radio communications, as in the ability to listen to the radio at home, not cellular phones.

Issue #2: CTIA’s request that local municipalities be required to process wireless tower applications within 45-75 days ignores certain realities of local governments. Most jurisdictions already have in place specific timelines for processing applications. These timelines take into account the required public participation, frequency of meetings of decision makers and the required time to review an application. They are often mandated at the state level. More often than not, application processing delays are due to the applicant not filing the proper information in a timely manner, not due to a jurisdiction dragging its feet.

Issue #3: CTIA’s request that an application be deemed approved if a jurisdiction misses the FCC deadline again ignores the fact that most application delays are due to applicant error, and sets a dangerous precedent. All land-use applications, except in the case of an emergency, must be given equal weight and considered as they arrive. Wireless communication providers should not be given procedural precedent over other land-use applicants. Applicants are already provided an avenue to redress delays using the courts. The courts have a long precedence recognizing that municipalities process applications and implement local law in a fair and equitable way. The onus should be on the applicant to show that a jurisdiction is acting in an egregious way. It should not be assumed that because a deadline is not met, it is due to the jurisdiction stalling or interrupting the process. The courts are the proper venue for these considerations. If a jurisdiction is acting in an inappropriate manner in the processing of wireless tower applications, then it should be held to account. But this should be shown, not assumed.

Issue #4: CTIA’s request that local jurisdictions be prevented from considering the presence of other carriers in evaluating an additional carrier’s application for an antennae site is inappropriate. Wireless providers can often share an existing tower with another provider, and should be required to do so if possible. It should only be after determining that pre-existing structures cannot be utilized to extend the signal of a specific carrier that a jurisdiction should need to consider where to site a new antennae structure. It is poor precedence and poor planning for a jurisdiction to consider any application for land-use without taking into account what impact said land-use may have

on the jurisdiction both specifically and collectively. If a jurisdiction is only allowed to review applications independent of pre-existing conditions, it is not truly reviewing the application.

Issue #5: CTIA's request to abolish any requirement for variances for tower applications again fails to address concerns realistically and is ambiguous. It is unclear as to what CTIA considers a "variance". Generally, a "variance" only allows a minor deviation from a zoning code. CTIA seems to interpret the term as allowing an exception to the code. Regardless, many jurisdictions do not use variances to permit wireless towers.

For example, the City of Airway Heights would not allow a variance for this type of structure because such structures are covered by a specific section of the Airway Heights Municipal Code (AHMC 17.28). Wireless towers are considered conditional uses because they are considered special cases, and therefore must meet certain conditions. This is because Airway Heights is bordered to the southeast by the Spokane International Airport (SIA) and to the west by the Fairchild Air Force Base (FAFB). Due to the need to ensure clear flight paths and adequate approaches, structures in Airway Heights are not to be constructed over 50' in height. The review process for a conditional use that allows for a structure's height beyond 50' is paramount to the public safety of both the community and aircraft. Allowing structures over 50' in height must be an exception, not the rule. The conditional use review process ensures that the local jurisdictions, airports, and airbases, are made aware of the proposal, are allowed to comment, and if necessary prevent, the construction of a structure that may be, as proposed, a risk to life and limb of community members, pilots, and air passengers.

The City of Airway Heights respectfully acknowledges that some of the issues presented by CTIA should be clarified. The fact that some applications for wireless towers are taking over a year to process is a concern that should be addressed. Unfortunately, CTIA's recommended remedies are too broad and ignore that fact that most jurisdictions are processing wireless tower applications appropriately and expeditiously.

The City of Airway Heights, Washington, respectfully requests that the FCC not grant the request for clarification as interpreted and submitted by CTIA – The Wireless Association. The City of Airway Heights asks that the FCC clarify those sections as requested by CTIA, but respectfully requests that the FCC interpret said sections to maintain the proper authority and continued precedence of local jurisdictional control over local land-use and community design.

Sincerely,

Albert Tripp  
City Manager  
City of Airway Heights